Tunku Yaacob Holdings Sdn Bhd v Pentadbir Tanah Kedah & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–35 OF 2012(K)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), ZALEHA ZAHARI, MOHAMED APANDI ALI, ABU SAMAH NORDIN AND RAMLY ALI FCJJ
1 OCTOBER 2014

Civil Procedure — Judicial review — Application for — Acquisition of land — Decision of state authority — Whether application for leave filed within 40 days from date of publication of Form D — Commencement of time frame of 40 days to file leave application — Whether started from date Form E was served — Whether commencement of proceedings for land acquisition communicated to appellant

After successfully obtaining approval from the relevant authorities to construct a building ('Plaza Tunku Yaacob Complex'), the appellant, the owner of two pieces of adjoining lands, applied for judicial review and challenged the decision of the State Authority's, pursuant to s 8(1) of the Land Acquisition Act 1960 ('the LAA'), declaring that the appellant's lands would be acquired. Under the said section, a declaration of intended acquisition of both the lands ('Form D') was published in the *Gazette* on 9 June 2011.The appellant received Form E, notifying it that pursuant to Form D, an enquiry would be held to hear all claims for compensation which arose from the said acquisition. The appellant then filed an ex parte application for leave to commence judicial review proceedings. The appellant applied for an adjournment of the hearing of the inquiry before the land administrator pending the outcome of the leave application but the application was not entertained and the appellant had to participate. The appellant alleged in the High Court, that it had actual knowledge of the respondents' decision to acquire the said lands only after receiving Form E. The High Court dismissed the appellant's application on the ground that it was not filed within the time prescribed pursuant to O 53 r 3(6) of the RHC 1980. The Court of Appeal affirmed the High Court's decision and hence, this appeal.

Held, allowing the appeal:

(1) **(per Ramli Ali FCJ, majority)** The actual commencement of the proceedings for land acquisition was by giving public notice in Form E under s 10 of the LAA. Section 11 provides for specific and express requirement that copies of such notice in Form E must be served in the

manner prescribed under s 53. The clear intention of s 11 read together with ss 53 and 54 is that Form E, the relevant document to commence proceedings for land acquisition under the LAA, must effectively be delivered and communicated to the interested persons, particularly the occupier or the registered proprietor of such land (see paras 41, 43, 44 & 47).

(2) **(per Ramli Ali FCJ, majority)** With the comprehensive and elaborate provisions in ss 10, 11, 52, 53 and 54 of the LAA, a mere publication in the *Gazette* of a notification or declaration in Form D under s 8(1) of the LAA is clearly insufficient for the purpose of communicating the decision relating to the acquisition of the land to the interested persons concerned. For the purpose of O 53 r 3(6) of the RHC 1980, Form E of the LAA which commences proceedings for the acquisition of lands and served on the interested persons in the manner prescribed by the relevant express specific provisions in the LAA, can be construed as the first communication to the appellant, being the registered proprietor of the lands in question, of the decision by the State Authority to acquire its lands. The expression 'communicate' is not synonymous with the expression 'publish' which means 'to make public' (see para 48).

(3) **(per Ramli Ali FCJ, majority)** Section 18 of the Interpretation Acts 1948 and 1967 is a general provision applicable to interpretation of all relevant written laws. Under s 18(2), publication in the official *Gazette* shall constitute sufficient notice of any matter required to be published in the *Gazette* by or under any Federal law. However, ss 10, 11, 52, 53 and 54 of the LAA are specific provisions to impress that the notification in Form E must mandatorily be served or communicated to the interested persons who are likely to be affected by the land acquisition. It could not be construed that by the publication in the *Gazette*, the State Authority had communicated the said notification or declaration to the appellant for the purpose of O 53 r 3(6) of the RHC 1980. The said notification or declaration was first communicated to the appellant when Form E was served on it (see para 55).

(4) **(per Ramli Ali FCJ, majority)** The wordings in O 53 r 3(6) of the RHC 1980 must be read together with the specific mandatory provisions in the LAA, particularly ss 10, 11, 53 and 54, relating to service of notification or declaration on acquisition of land by the State Authority in Form E on the registered proprietor, the occupier of such land or any other interested persons. The clear effect of those provisions is that the relevant notice or declaration relating to the acquisition must be brought to the actual knowledge, as opposed to constructive notice by way of a publication in the *Gazette*, of the persons concerned. Only then, the interested persons can exercise their right to challenge the acquisition decision by way of

judicial review proceedings under O 53 r 3(6) of the RHC 1980 within the prescribed time (see para 60).

(5) (**per Zaleha Zahari FCJ, dissenting**) Compliance with the time frame prescribed under O 53 of the RHC 1980 is fundamental as it goes to jurisdiction. An application for leave to apply for judicial review under O 53 must be filed within 40 days from the date of the publication of Form D in the *Gazette* and not from the service of Form E on the registered proprietor. The 40 days time period herein commenced from 9 June 2011, ie, the date when Form D was *Gazetted*. As such, there was delay in filing the application for leave (see paras 104, 110 & 112).

(6) (**per Zaleha Zahari FCJ, dissenting**) The application for extension of time should have been allowed. The State Authority's omission to reply to the appellant's letter dated 30 January 2011 containing the proposal that the appellant be allowed to continue with the development of the Plaza Tunku Yaakob Complex should have been taken into consideration. The failure of the State Authority to respond warranted the exercise of the court's power to extend time. Further, the fact that the appellant had attended the inquiry before the land administrator should not be held against it (see para 113).

[Bahasa Malaysia summary

Selepas berjaya mendapat kelulusan daripada pihak berkuasa yang berkenaan untuk membina sebuah bangunan ('Kompleks Plaza Tunku Yaacob'), perayu, pemilik dua bidang tanah yang bersebelahan, memohon untuk semakan kehakiman dan mencabar keputusan Pihak Berkuasa Negeri, menurut s 8(1) Akta Pengambilan Tanah 1960 ('APT'), mengisytiharkan bahawa tanah perayu akan diambil alih. Di bawah seksyen tersebut, suatu perisytiharan pengambilalihan yang dicadangkan di kedua-dua tanah ('Borang D') telah diterbitkan dalam *Warta* pada 9 Jun 2011. Perayu menerima Borang E, memaklumkannya bahawa menurut Borang D, satu siasatan akan diadakan untuk mendengar semua tuntutan untuk pampasan yang timbul daripada pengambilalihan tersebut. Perayu kemudiannya memfailkan permohonan ex parte untuk kebenaran untuk memulakan prosiding semakan kehakiman. Perayu memohon untuk penangguhan pendengaran siasatan tersebut di hadapan pentadbir tanah sementara menunggu keputusan permohonan tersebut tetapi permohonan itu tidak dilayan dan perayu perlu mengambil bahagian. Perayu mendakwa di Mahkamah Tinggi, bahawa dia mengetahui tentang keputusan responden untuk mengambil tanah tersebut hanya selepas menerima Borang E. Mahkamah Tinggi menolak permohonan perayu atas alasan bahawa permohonan tersebut tidak difailkan dalam masa yang ditetapkan menurut A 53 k 3 (6) KMT 1980. Mahkamah Rayuan mengekalkan keputusan Mahkamah Tinggi dan dengan itu, rayuan ini dibuat.

Diputuskan, membenarkan rayuan:

(1) (**oleh Ramli Ali HMP, majoriti**) Permulaan sebenar prosiding bagi pengambilan tanah adalah dengan memberi notis awam dalam Borang E di bawah s 10 APT. Seksyen 11 memperuntukkan keperluan tertentu dan nyata bahawa salinan notis dalam Borang E mestilah diserahkan mengikut cara yang ditetapkan di bawah s 53. Tujuan jelas s 11 dibaca bersama ss 53 dan 54 adalah bahawa Borang E, dokumen yang berkaitan untuk memulakan prosiding untuk pengambilan tanah di bawah APT, perlu dihantar dan disampaikan secara efektif kepada orang yang berkepentingan, terutamanya penghuni atau pemilik berdaftar tanah tersebut (lihat perenggan 41, 43, 44 & 47).

(2) (**oleh Ramli Ali HMP, majoriti**) Dengan peruntukan yang komprehensif dan terperinci dalam ss 10, 11, 52, 53 dan 54 APT, hanya penerbitan dalam Warta mengenai suatu pemberitahuan atau pengisytiharan dalam Borang D di bawah s 8 (1) APT itu jelas tidak mencukupi untuk tujuan memaklumkan keputusan berhubung dengan pengambilan tanah kepada orang berkepentingan yang berkenaan. Bagi tujuan A 53 k 3 (6) KMT 1980, Borang E dalam APT itu yang memulakan prosiding untuk pengambilan tanah dan diserahkan kepada orang yang berkepentingan dalam cara yang ditetapkan oleh peruntukan tersurat yang berkenaan dalam APT, boleh ditafsirkan sebagai komunikasi yang pertama kepada perayu, yang merupakan pemilik berdaftar tanah-tanah yang dipersoalkan, tentang keputusan oleh Pihak Berkuasa Negeri untuk mengambil alih tanah-tanah tersebut. Ungkapan 'berkomunikasi' tidak sinonim dengan ungkapan 'menerbitkan' yang bermaksud 'untuk pemberitahuan awam' (lihat perenggan 48).

(3) (**oleh Ramli Ali HMP, majoriti**) Seksyen 18 Akta Tafsiran 1948 dan 1967 adalah peruntukan am yang terpakai bagi pentafsiran semua undang-undang bertulis yang berkaitan. Di bawah s 18(2), penerbitan dalam *Warta* rasmi menjadi notis yang mencukupi berhubung apa-apa perkara yang perlu diterbitkan dalam Warta oleh atau di bawah undang-undang Persekutuan. Walau bagaimanapun, ss 10, 11, 52, 53 dan 54 APT adalah peruntukan khusus untuk menekankan bahawa pemberitahuan dalam Borang E perlu disampaikan secara mandatori atau dimaklumkan kepada orang berkepentingan yang berkemungkinan terjejas oleh pengambilan tanah tersebut. Ia tidak boleh ditafsirkan dengan penerbitan dalam Warta, Pihak Berkuasa Negeri telah memaklumkan pemberitahuan tersebut atau akuan kepada perayu untuk tujuan A 53 k 3 (6) KMT 1980. Pemberitahuan atau pengisytiharan yang mula-mula diberitahu kepada perayu adalah apabila Borang E telah diserahkan kepadanya di (lihat perenggan 55).

(4) (**oleh Ramli Ali HMP, majoriti**) Perkataan-perkataan dalam A 53 r 3 (6) KMT 1980 hendaklah dibaca bersama dengan peruntukan mandatori khusus dalam APT, terutamanya ss 10, 11, 53 dan 54, berhubung dengan

penyerahan pemberitahuan atau pengisytiharan mengenai pengambilan tanah oleh Pihak Berkuasa Negeri dalam Borang E kepada pemilik berdaftar, orang yang menduduki tanah tersebut atau mana-mana orang lain yang berkepentingan. Kesan jelas peruntukan tersebut adalah bahawa notis yang berkaitan atau pengisytiharan berhubung dengan pengambilan mesti dibawa kepada pengetahuan yang sebenar, berbanding dengan notis konstruktif melalui penerbitan dalam Warta, daripada orang yang berkenaan. Hanya selepas itu, orang yang berkepentingan boleh menggunakan hak mereka untuk mencabar keputusan pengambilalihan melalui prosiding semakan kehakiman di bawah A 53 k 3 (6) RHC 1980 dalam masa yang ditetapkan (lihat perenggan 60).

(5) (**oleh Zaleha Zahari HMP, yang menentang**) Pematuhan dengan tempoh masa yang ditetapkan di bawah A 53 KMT 1980 adalah penting kerana perkara tersebut melibatkan bidang kuasa. Satu permohonan untuk mendapatkan kebenaran untuk memohon semakan kehakiman di bawah A 53 hendaklah difailkan dalam tempoh 40 hari dari tarikh penerbitan Borang D dalam Warta dan bukannya dari penyerahan Borang E kepada pemilik berdaftar. Tempoh masa 40 hari di sini bermula dari 9 Jun 2011, iaitu tarikh apabila Borang D diwartakan. Oleh itu, terdapat kelewatan memfailkan permohonan untuk kebenaran (lihat perenggan 104, 110 & 112).

(6) (**oleh Zaleha Zahari HMP, yang menentang**) Permohonan lanjutan masa sepatutnya dibenarkan. Peninggalan Pihak Berkuasa Negeri untuk menjawab surat perayu bertarikh 30 Januari 2011 yang mengandungi cadangan bahawa perayu dibenarkan untuk meneruskan dengan pembangunan Kompleks Plaza Tunku Yaakob sepatutnya telah diambil kira. Kegagalan Pihak Berkuasa Negeri untuk bertindak balas mewajarkan pelaksanaan kuasa mahkamah untuk melanjutkan masa. Seterusnya, fakta bahawa perayu telah menghadiri siasatan di hadapan pentadbir tanah tidak perlu digunakan terhadapnya (lihat perenggan 113).]

Notes

For cases on application for, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5575–5579.

Cases referred to

Abdul Aziz bin Mohd Alias v Timbalan Ketua Polis Negara, Malaysia & Anor [2010] 4 MLJ 1; [2010] 3 CLJ 643, FC (distd)

Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor [2008] 6 MLJ 704; [2008] 6 CLJ 205, CA (refd)

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145; [2010] 5 CLJ 865, FC (refd)

Bato Bagi & Ors v Kerajaan Negeri Sarawak and another appeal [2011] 6 MLJ 297, FC (refd)
Enmore Estates Ltd v Darsan [1970] AC 497, PC (refd)
Ex-parte Guan Teik Sdn Bhd (substituting Lim Oo Guan, deceased) [2010] 1 MLJ 1, FC (refd)
Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35, SC (folld)
Lee Lian & Ors v PP [1956] 1 MLJ 191 (refd)
Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 2 MLJ 271, SC (refd)
Mersing Omnibus Co Sdn Bhd v Minister of Labour And Manpower & Anor [1983] 2 MLJ 54, FC (refd)
PP v Koo Cheh Yew & Anor [1980] 2 MLJ 235 ; [1980] 1 LNS 61, FC (refd)
Quebec Rly, Light, Heat and Power Co v Vandry [1920] AC 662, PC (refd)
Ravindran v Malaysia Examinations Council [1984] 1 MLJ 168; [1984] 1 CLJ 320, FC (refd)
Sh Gurbanchan Singh v SM Jagiro [1956] AIR Vol 43 (refd)
Shaharuddin bin Ali & Anor v Superintendent of Lands and Surveys, Kuching Division & Anor [2005] 2 MLJ 555, HC (refd)
Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 MLJ 161, FC (refd)
Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor [2010] MLJU 1032; [2011] 7 CLJ 1005, HC (refd)

Legislation referred to

Criminal Procedure Code ss 39(2), 488
Federal Constitution art 13
Interpretation Acts 1948 and 1967 ss 17A, 18, 18(2),
Land Acquisition Act 1960 ss 4, 7, 8, 8(1), (2), 10, 10(1), (3), 11, 14, 38(1), 52, 53, 54, Forms D, E
Rules of the High Court 1980 O 53, rr 1, (1), 1A, 3(6)

Teo Cheng Wee (SP Tan with him) (Khaw & Partners) for the appellant.
Azmi Ariffin (Fariza Hamzah with him) (State Legal Advisor, Kedah) for the first & second respondent.
Chan Kean Li (Yap Kok Kheong with him) (Hoe & Ahmad Zaki) for the third respondent.
Suzana Atan (Senior Federal Counsel,Attorney General's Chambers) for the respondent.

Ramly Ali FCJ:

[1] The appellant in the present appeal before us, was the applicant in the High Court who had filed an ex parte application for leave to commence

judicial review proceedings to quash the decision of the state authority in having compulsorily acquired two parcels of land belonging to the appellant. In the same application the appellant had also sought two further orders, namely:

(a) a stay of all proceedings of the intended acquisition; and

(b) an extension of time of 40 days in the event its application for leave was filed out of time.

[2] The High Court dismissed the said ex parte application with costs on 27 December 2011. Aggrieved by the decision of the High Court, the appellant appealed to the Court of Appeal. On 30 May 2012, the Court of Appeal dismissed the appeal with costs and affirmed the decision of the High Court. The appellant is now appealing against the said decision of the Court of Appeal.

[3] On 27 November 2012, leave to appeal was granted by this court to the appellant on the following questions of law, namely:

(i) where a registered proprietor of a piece of land, who is not the occupier thereof, is challenging the state authority's decision made pursuant to s 8(1) of the Land Acquisition Act 1960 ('Act 486') ('the LAA') declaring that the land is to be acquired, whether the application for leave for judicial review made under O 53 of the Rules of the High Court 1980 ('the RHC 1980') must be filed within 40 days from:

   (a) the date of the publication of Form D of the LAA in the *Gazette*; or

   (b) the service of the notice of enquiry in Form E of the LAA on the registered proprietor of the land pursuant to s 10(1) of the LAA.

(ii) where O 53 r 3(6) of the RHC 1980 requires an application for judicial review to be filed within 40 days from the date 'when the decision was first communicated to an applicant', whether the state authority's decision, made pursuant to s 8(1) of the LAA declaring that the land is to be acquired, is 'first communicated' to the registered proprietor:

   (a) on the date of the publication of Form D of the LAA in the *Gazette*; or

   (b) the date when Form D of the LAA is served on the registered proprietor of the land by way of an appendix to Form E of the LAA pursuant to s 10(3) of the LAA; or

   (c) the date when the notice of enquiry in Form E of the LAA is served on the registered proprietor of the land pursuant to s 10(1) of the LAA.

A FACTUAL BACKGROUND

[4] At all material times, the appellant was the registered proprietor of Lot 150 GRN 3605 and Lot 151, GRN 3606, Seksyen 18, Bandar Alor Setar, Kedah. The two lots were adjacent to each other. The appellant had obtained B planning permission from the Majlis Perbandaran Kota Setar vide its letter dated 12 December 1993 for the construction of a building known as Plaza Tunku Yaacob on Lot 150 and that the building had been partially constructed.

C **[5]** By a letter dated 5 January 2011 from the third respondent, the appellant was informed that the second respondent was planning to re-develop the said Plaza Tunku Yaakob and that the third respondent together with another third party, known as Bellview Group were entrusted to jointly plan the proposed re-development of the plaza estimated to cost RM300m; and that D the appellant was invited to be involved in the said re-development and was invited to attend a meeting at the third respondent's office on 18 January 2011.

[6] The appellant's representatives attended the said meeting. In that meeting, the third respondent presented two options for the re-development of E the plaza, namely:

(a) by initiating land acquisition proceeding to acquire both Lot 150 and Lot 151; and

F (b) by a joint venture with the appellant for up to 20% to 30% equity.

[7] At the said meeting, the appellant's representatives were only shown some drawings of the proposed facade for the re-development of the plaza. The third respondent did not furnish the appellant with any document or G information relating to the planning details, costing, sales forecast and time table, etc. to enable the appellant to reach a considered decision whether to participate in the joint venture or not.

[8] Vide a letter dated 30 January 2011, the appellant wrote to the third H respondent proposing a third alternative ie that the appellant be allowed to complete the construction of the said plaza. In that same letter the appellant had also indicated that it was however prepared to revisit the second option in the event its alternative option is not agreeable by the third respondent. There was no reply to this letter and neither did the third respondent contact the I appellant again on the matter.

[9] In the meantime, the appellant received through a registered mail on 11 July 2011, a Form E of the LAA dated 3 July 2011, giving notice that in accordance with a declaration of intended acquisition of the two lots, an

inquiry to hear all claims for compensation for all interest in the said lands would be held on 25 July 2011. The inquiry was subsequently postponed to 17 August 2011.

[10] The appellant alleged that before receiving the said Form E, it was not aware that a decision had been made by the state authority to acquire the said lands and a declaration in Form D had been made under s 8 of the LAA. According to the respondent the notification in Form D of the LAA was issued pursuant to s 8(1) of the same Act on 20 April 2011 and subsequently *Gazette*d on 9 June 2011.

[11] On 11 August 2011, the appellant filed an ex parte application for leave to commence judicial review proceedings at the High Court, seeking, inter alia, the following reliefs:

(a) that the appellant be granted leave to apply for an order for certiorari to move the court to quash the second respondent's decision and the declaration of the intended acquisition of Lot 150, Seksyen 18, GRN 3605, Town of Alor Setar, District of Kota Setar, Kedah ('Lot 150');

(b) that the appellant be granted leave to apply for an order for certiorari to move the court to quash the second respondent's decision and the declaration of the intended acquisition of Lot 151, Seksyen 18, GRN 3606, Town of Alor Setar, District of Kota Setar, Kedah ('Lot 151'); and

(c) that in the event that this application is filed out of the 40 days period as prescribed in O 53 r 3(6) of the RHC 1980, the appellant be granted extension of time to file the leave application.

Accordingly, a notice of the leave application together with the relevant documents were served on the Attorney General's Chambers pursuant to O 53 r 3(3) of the RHC 1980.

[12] At the hearing of the leave application a preliminary objection was raised by the Attorney General's Chambers that the appellant's application was not made within the time prescribed by O 53 r 3(6) of the RHC 1980 because the 40 days period mentioned in r 3(6) commenced to run from the date of publication of Form D in the *Gazette* on 9 June 2011, thus the appellant's application which was filed on 11 August 2011 was 23 days out of time; and therefore the appellant's application for leave must be dismissed.

[13] The appellant on the other hand contended that the 40 days period for filing the leave application as prescribed in O 53 r 3(6) of the RHC 1980 would only start to run against the appellant when it received Form E issued pursuant to s 10 of the LAA, via registered mail on 11 July 2011; and the 40 days period ended on or about 20 August 2011; therefore, the leave application which was

filed on 11 August 2011 was clearly within the 40 days period as prescribed.

[14] On 27 December 2011 the High Court dismissed the appellant's application for leave on the said preliminary objection raised by the Attorney General's Chambers. The learned judge held that the date of publication in the *Gazette* of Form D on 9 June 2011 was the date on which the decision to acquire the lands was first communicated to the appellant, as the registered proprietor of the lands. The learned judge also held that the appellant's application for leave which was filed on 11 August 2011 was 23 days out of time; and the appellant had not given any reasons for the late filing of the said application.

[15] The appellant's appeal to the Court of Appeal was also dismissed with costs on 14 January 2013. Briefly, the Court of Appeal held:

(a) based on the wordings of O 53 r 3(6) of the RHC 1980, a first communication of a decision to an applicant under the rule 'can also occur' when the decision was published in the *Gazette*;

(b) the publication of Form D notification in the *Gazette* on 9 June 2011 constituted sufficient notice in law to the appellant of the decision to acquire both Lots 150 and 151; and such publication could be regarded as the date when the decision to acquire was first communicated to the appellant; and therefore the appellant's leave application was filed out of time as prescribed in O 53 r 3(6) of the RHC 1980; and

(c) the learned judge did consider the appellant's application for extension of time but found that the appellant had not given concrete reasons for the late filing of the said leave application.

THE ISSUE

[16] The issue before us revolves on the interpretation of O 53 r 3(6) of the RHC 1980 in the context of land acquisition proceedings under the LAA.

[17] At the relevant time when the leave application was filed by the appellant on 11 August 2011, the applicable provisions of O 53 r 3(6) was under the old RHC 1980, which provides:

> 3(6) An application for judicial review shall be made promptly and in any event within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the applicant provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

[18] The same provisions were adopted in the Rules of Court 2012 that came into effect on 1 August 2012, except that the time to apply for judicial review was extended from 40 days to three months. A

[19] The issue before us is: when does the 40 days period under O 53 r 3(6) start to run? — is it at the date of publication of Form D in the *Gazette* under s 8(1) of the LAA or the date of service of the notice of enquiry in Form E on the registered proprietor of the land pursuant to s 10(1) of the LAA? B

[20] Under O 53 r 3(6), an application for judicial review, must be made promptly and in any event within 40 days from the date when the grounds for the application first arose or when the decision was first communicated to the applicant. However, the High Court may for a good reason extend the said period of 40 days. C

D

[21] The appellant argued that the rights of the appellant as a citizen to property under art 13 of the Federal Constitution could only be deprived in accordance with law and that it would only be fair and reasonable that the decision to acquire its lands be brought to its actual knowledge by way of communicating the same to the appellant. The appellant further submitted that a citizen cannot be expected to apply for leave to commence judicial review to challenge the decision to acquire his property unless he was made aware of such a decision, and this could only happen when he received actual notice (as opposed to a constructive notice by way of a *Gazette*) of the said decision. E

F

[22] The Attorney General's Chambers submitted that an application for leave for judicial review made under O 53 of the RHC 1980 must be filed within 40 days from the date of the publication of Form D in the *Gazette* under s 8(1) of the LAA; and not from the service of the notice of enquiry in Form E of the LAA on the registered proprietor of the land in question. The chambers further submitted that s 8 of the LAA is the operative provision with regard to the notification of the decision to acquire for a public purpose and the publication in the *Gazette* is a public notice to all persons including the appellant who is the registered proprietor of the land in question; and in the present case, the intended acquisition in Form D of the LAA was *Gazette* on 9 June 2011, and the application for leave for judicial review was filed by the appellant on 11 August 2011; and therefore, there was a delay of 23 days in filling the said application and there was no explanation offered by the appellant in its affidavits to explain the delay to support its application for an extension of time. G H I

[23] The Attorney General's Chambers also submitted that the publication of Form D in the *Gazette* not only constitutes sufficient notice in law to the appellant of the decision to acquire the lands which is a matter required to be

published in the *Gazette* by a federal law, such publication can be regarded as the date when the decision to acquire the lands was first communicated to the appellant.

[24] In the present application for judicial review, the decision being challenged is the state authority's acquisition of the appellant's lands and the conduct of the land acquisition proceedings as reflected in Form E issued to the appellant. It is crucial to first identify definitely what is the decision that is being challenged. The question that arose pertaining to whether the application by the appellant was out of time vis-a-vis the said decision was first communicated to the appellant. This would determine when the prescribed 40 days period for filing the application for judicial review under O 53 r 3(6) of the RHC 1980 should begin to run.

[25] The word *'communicate'* is not expressly defined in the RHC 1980. It is also not expressly defined in the LAA. In the *New Shorter Oxford English Dictionary* the verb 'communicate' is given the meaning of 'convey or exchange information etc succeed in invoking understanding'. The *Oxford Advanced Learner's Dictionary* defines 'communicate' as 'to make something known to somebody'; 'to pass something on; to transmit something' ; 'to make one's idea, feelings etc clear to others'. In the *Macmillan English Dictionary for Advanced Learners* (New Edition), the word 'communicate' is explained as 'to express thoughts, feelings, or information to another person ... for example by speaking or writing'; 'to let someone knew what you are feeling or thinking.' It is further explained as 'when people communicate; it is as if their thoughts and ideas travel between one person and the other; or are sent from one person to another.'

[26] In the case of *Sh Gurbanchan Singh v SM Jagiro* 1956 AIR Vol 43, Punjab Section, p 254, Bhandari CJ, ruled that the expression 'communicate' is not synonymous with the expression 'publish' which mean 'to make public'. It means 'to bestow convey make known, recount, to import as to communicate information to anyone'.

[27] In that case, the validity of an order of a second class magistrate dated 22 January 1955 (made under s 488 of the CPC) was challenged on the ground that the learned magistrate did not exercise the powers of a magistrate of the first class on 22 January 1955 as a copy of the notification by which the magistrate was invested with the powers of a magistrate of the first class, though dated 3 January 1955, was only sent to him on 8 February 1955 and published in the local official *Gazette* on 18 February 1955. The relevant rule (ie s 39(2) of the CPC) declared that an order conferring magisterial powers on a person 'shall take effect on the day on which it is communicated to the person concerned'.

[28] The court held that as the order investing the magistrate with powers of the first class magistrate was not communicated to him till 8 February 1955 and as he did not exercise the powers of the first class magistrate before that date, it was not within his competence to make an order under s 488 of the CPC on 22 January 1955; the order under s 488 was therefore void and set aside.

[29] The clear indication in the above case is that 'the day on which it is communicated to the person concerned' as stipulated in the relevant s 39(2) of the CPC, refers to the day when a copy of the notification was actually sent and bought to the actual notice of the magistrate concerned on 8 February 1955, and not the day when the said notification was issued on 3 January 1955, nor the day when it was published in the official *Gazette* on 18 February 1955.

[30] The above decision is clearly in line with the literal meaning of the word 'communicate' as defined in the various dictionaries cited above. On the presumption that the Legislature does nothing in vain, the court must endeavour to give significance to every word of the law legislated and it is presumed that if a word or phrase appears in a legislation, it was put there for a purpose and must not be disregarded (see *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 (SC); *Quebec Rly, Light, Heat and Power Co v Vandry* [1920] AC 662; and *Enmore Estates Ltd v Darsan* [1970] AC 497, at p 506).

[31] Abdoolcader SCJ in *Foo Loke Ying* had made a very interesting observation on this issue when His Lordship said:

> We should perhaps reiterate that the starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question that is its proper and most known signification. Some three months ago Lord Scarman in delivering the leading judgment of the House of Lords in *South West Water Authority v Rumble's*) said (at p 411):
>
> > ... the language of the two paragraphs consists of ordinary English words which possess by their very imprecision the flexibility which is the hallmark of the survival of English as a living and worldwide tongue. I have no doubt that it would be contrary to the legislative purpose of the enactment to restrict or refine their breadth and flexibility in the context of this legislation, which has to cover a wide range of circumstances and situations present and future. A restrictive interpretation of the Legislature's language would defeat the broad purpose of this innovative and reforming statute.
>
> We are of the view that the provisions of the Act under consideration before us call for a purposive and literal construction which is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and reflects the purposes of the enactment.

[32] Where the language of a legislation is clear and explicit, the court must give effect to it, whatever may be the consequence, for in that case, the words of the legislation speak of the intention of the Legislature. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense, and not to limit those plain words by other considerations (see *Ex-parte Guan Teik Sdn Bhd (substituting Lim Oo Guan, deceased)* [2010] 1 MLJ 1 (FC).

[33] In the above case (*Ex-parte Guan Teik*), Augustine Paul FCJ expressed his view that where the words used are ambiguous, the meaning to be preferred must be one which is more in accord with justice and convenience but in general the words used read in their context must prevail. His Lordship cited a passage from *Bindra's Interpretation of Statutes* (7th Ed) at p 554 to affirm that 'it may therefore, be well settled that when, a statute is susceptible of two or more interpretations, normally that interpretation should be accepted as reflecting the will of the Legislature which is presumed to operate most equitably, justly and reasonably as judged by the ordinary and normal conceptions of what is right and what is wrong and of what is just and what is unjust'.

[34] In order to determine the issue before us in the present appeal, the words 'the date when the decision is first communicated to the applicant' as found in O 53 r 3(6) of the RHC 1980 must be read together or in the context of the relevant provisions of the LAA relating to land acquisition proceedings. All those relevant provisions must be interpreted based on 'a purposive and literal construction which is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and reflects the purposes of the enactment.' This is clearly in line with s 17A of the Interpretation Act 1948 and 1967 ('the Act 338') which provides that 'in the interpretation of a provision of an Act a construction that would promote the purpose or object underlying the Act (whether that purpose or object is express by stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.'

[35] It is perhaps necessary to refer to some relevant provisions of the LAA and the relevant forms issued relating to land acquisition proceedings under the said Act.

[36] Whenever the state authority is satisfied that any land in the locality in the state is likely to be needed for any public purpose or for any purpose which is beneficial to the economic development of Malaysia or to the public generally, a notification in Form A shall be published in the *Gazette*. Form A is just a notice that the land in question is likely to be acquired. As part of a preliminary investigation, the land administrator shall give public notice of the

notification by causing copies of such notification to be posted at the district land office, on public notice boards in the township or mukim in which the land to which such notification refers, is situated or in such other places on or near the land specified by the land administrator, pursuant to s 52 of the LAA. This is provided for under s 4 of the Act. Under sub-s (3), the said notification shall lapse in so far as it relates to any land in respect of which there is not published in the *Gazette* within 12 months from the date of publication of such notification, a declaration of intended acquisition as in Form D under s 8(1) of the same Act. There is no express provision in the LAA that this notification in Form A must be served on the occupier or registered proprietor of the land in question.

[37] After the issuance of Form A, the land administrator shall under s 7 of the LAA prepares and submits to the state authority a plan of the whole area of such lands which would be necessary to acquire and a list of such lands affected by acquisition, in Form C. There is also no requirement under the LAA that Form C needs to be published in the *Gazette*, or to be served on anybody.

[38] The next step is the issuance of a declaration of intended acquisition in Form D by the state authority under s 8 of the LAA which provides:

> 8 Declaration that land is required for a public purpose
>
> (1) When the state authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the Gazette.
>
> (2) A copy of the list of lands referred to in section 7(b), amended, if necessary, in accordance with the decision of the state authority, shall be included as a schedule to the declaration in Form D.
>
> (3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.
>
> (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the land administrator has not made an award under section 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.
>
> (5) Where the declaration under subsection (1) has lapsed, sections 35(2), (3) and (4) shall apply with the necessary modifications.

[39] Form D is a declaration of an intended acquisition of lands required for public purpose. The list of lands referred to in Form C must be included as a schedule to Form D. The declaration shall lapse and ceases to be of any effect

on the expiry of two years after the date of its publication in the *Gazette* in so far as it relates to any land in respect of which the land administrator has not made an award in respect of each person whose interest in the land has been established in an enquiry under s 14 of the LAA. Where the declaration has lapsed, all proceedings already taken or being taken in consequence of such declaration in respect of such lands shall terminate and be of no effect.

[40] Form D needs to be published in the *Gazette* as required under s 8(1). There is no requirement that it must be served in anybody (otherwise than by notification in the *Gazette*).

[41] The actual commencement of proceedings for land acquisition is by giving public notice in Form E under s 10 of the LAA. Section 10 provides:

> 10 land administrator to commence proceedings
>
> (1) The land administrator shall, having completed the action required by section 9, commence proceedings for the acquisition of the land by giving public notice in Form E in the manner prescribed by section 52, and by fixing the date of an inquiry for the hearing of claims to compensation for all interests in such land.
>
> (2) The land administrator shall not hold such inquiry earlier than twenty-one days after the date of publication of the notice referred to in subsection (1).
>
> (3) A copy of the schedule to the declaration in Form D Gazette under section 8(2) shall be appended to every notice in Form E.

[42] Section 10(1) of the LAA clearly stipulates that 'the land administrator shall ... commence proceedings for the acquisition of the land by giving public notice in Form E in the manner prescribed by s 52 ...' ie by causing copies of such notification declaration or document to be posted at the district land office, on public notice boards in the township or mukim in which the land is situated and in such other places on or near the land in question as the land administrator may think fit. There is no indication in the LAA that Form E must be published in the *Gazette*. However, as required under s 10(3), a copy of the schedule to the declaration in Form D *Gazetted* under s 8(2) must be appended to every notice in Form E.

[43] Section 11 of the LAA provides for specific and express requirement that copies of such notice in Form E must be served in the manner prescribed by s 53, upon:

(a) the occupier of such land;

(b) the registered proprietor of such land, where he is not the occupier thereof;

(c) any person having a registered interest in such land;

(d) any person whom he knows or has reason to believe to be interested therein.

This requirement is 'in addition to giving public notice as required by s 10(1)'.

[44] Form E must be served in the manner prescribed by s 53, which provides as follows:

53 Service of notices

(1) Service of any notice or other document under this Act shall, subject to section 54, be made by delivering or tendering a copy thereof, duly signed by the land administrator or other proper authority, either:

(a) to the person to whom the notice is addressed or, if he cannot be found;

(b) to any adult member of his family residing with him,and by obtaining the signature of the person to whom such copy is delivered or tendered to an acknowledgement of service endorsed upon the original document or an office copy thereof, or entered in a book to be kept for that purpose.

(2) If the person to whom any copy referred to in subsection (1) is delivered or tendered is unwilling or unable to sign the acknowledgement thereof, or if no proper person can be found on whom to effect service, service may be effected by fixing a copy thereof:

(a) upon the outer door of the building in which the person therein named ordinarily dwells or carries on business; and

(b) on any public notice-board in the town, village or mukim in which the person to be served usually resides.

(3) Where the person to be served is the occupier of any scheduled land specified in any notice then, failing personal service, a copy of the notice shall also be posted in some conspicuous part of such land.

(4) In each of the cases referred to in subsections (2) and (3) the serving officer shall enter on the original of the document served, or on an office copy thereof, or in a book to be kept for the purpose, a statement of the time, place and manner in which he effected the service, and shall sign such statement.

[45] Section 53 stresses on strict compliance of service of notices or other documents relating to land acquisition upon the occupier or registered proprietor as well as person having a registered interest in such land. Those notices or documents, duly signed by the land administrator must be delivered or tendered a copy thereof to the person to whom the notice is addressed or, if he cannot be found, to any adult member of his family residing with him. The

signature of the person to whom such copy is delivered or tendered must be obtained and endorsed upon the original documents or an office copy thereof; and such endorsement must be entered in a book to be kept for that purpose.

[46] In the event that service of the notice or document cannot be done effectively under, ss 53 and 54 of the LAA provides that the land administrator must proceed to effect service upon an agent authorised to receive service on behalf of the party or upon a person entitled to act for such party, or where there is no such agent or person entitled to act within the state, effect service by sending the notice by registered post to the party if after reasonable inquiry, his address can be ascertained, and where he considers that publication in a newspaper is desirable, publish the notice in such local newspaper circulating in the state as he thinks fit.

[47] The clear intention of s 11 read together with ss 53 and 54 of the LAA is that Form E, the relevant document to commence proceedings for land acquisition under the LAA must effectively be delivered and communicated to the interested persons, particularly the occupier or the registered proprietor of such land. The clear effect of those provisions is that the relevant notice and information relating to the acquisition must be brought to the actual knowledge of the persons concerned; and sufficient proof acknowledging the service of the documents by the person to whom such documents are delivered must be obtained and entered in an official book to be kept for that purpose.

[48] With the comprehensive and elaborate provisions in ss 10, 11, 52, 53 and 54 of the LAA, we can safely conclude that a mere publication in the *Gazette* of a notification or declaration in Form D under s 8(1) of the LAA is clearly insufficient for the purpose of communicating the decision relating to the lands acquisition to the interested persons concerned. Our view is that for the purpose of O 53 r 3(6) of the RHC 1980 , Form E of the LAA which commences proceedings for the acquisition of lands and served on the interested persons in the manner prescribed by the relevant express specific provisions in the LAA, can be construed as the first communication to the appellant, being the registered proprietor of the lands in question, of the decision by the state authority to acquire its lands in question. To borrow the words of Bhandari CJ in the case of *Sh Gurbachan Singh v SM Jagiro*, the expression 'communicate' is not synonymous with the expression 'publish' which mean 'to make public'.

[49] In the present case, the relevant Form E was issued on 3 July 2011 by the state authority. It was posted by registered mail and was received by the appellant on 11 July 2011. On 11 August 2011 the appellant filed the leave application for judicial review at the High Court in Alor Setar, Kedah. Taking

the date 11 July 2011 as the starting point, it is clear that the leave application which was filed on 11 August 2011, was well within the 40 days period for the purpose of O 53 r 3(6) of the RHC 1980.

[50] In affirming the decision of the High Court, the Court of Appeal held that based on the wordings of O 53 r 3(6) of the RHC 1980, a first communication of a decision to acquire the lands in question to the appellant under the rule 'can also occur when the decision is published in the *Gazette*.' The Court of Appeal in its judgment used the words 'can also occur' (at p 8, para 19 of the judgment). Conversely, the impression it gives is that the communication can also occur when Form E was issued and served on the appellant.

[51] From our reading of the Court of Appeal's judgment, it appears that there could be two interpretations as to when the decision to be challenged was first communicated to the appellant ie the date of publication of Form D in the *Gazette* and it 'can also occur' at the date when Form E was served on the appellant. The settled general rule is that 'when a statute is susceptible of two or more interpretations, normally that interpretation should be accepted as reflecting the will of the legislation which is presumed to operate most equitably, justly and reasonably as judged by the ordinary and normal conceptions of what is right and what is wrong and of what is just and what is un just'. This principle is clearly stated in *Bindra's Interpretation of Statutes* (7th Ed) at p 554; which was accepted by the Federal Court in *Ex- parte: Guan Teik Sdn Bhd*.

[52] In the present case, as we have demonstrated above that the will and intention of the Legislature in relation to land acquisition proceedings under the LAA is that the decision to acquire land must effectively be communicated or brought to the actual knowledge or attention of the interested persons concerned in the manner specifically provided for in the relevant sections. The words of the relevant sections speak of the intention of the Legislature, and the court cannot restrict the meaning and ignore the clear terms of the provisions of the law.

[53] Both the High Court as well as the Court of Appeal relied on s 18(2) of the Interpretation Acts 1948 and 1967 in arriving at their decisions that the publication of Form D notification in the *Gazette* under s 8 of the LAA constitutes sufficient notice in law to the appellant and the date of such publication can be regarded as the date when the decision in question was first communicated to the appellant.

[54] Section 18(2) of the Interpretation Acts 1948 and 1967 provides:

(2) Publication in the official Gazette of Malaysia shall constitute sufficient notice of

> any matter required to be published in the Gazette by or under any federal law or required to be published in the Sabah government Gazette or the Sarawak government Gazette by or under any enactment of those States which has been declared to be a federal law.

[55] Our view is that s 18 of the Interpretation Acts 1948 and 1967 is a general provision applicable to interpretation of all relevant written laws. Under s 18(2) of the said Act, publication in the official *Gazette* shall constitute sufficient notice of any matter required to be published in the *Gazette* by or under any federal law; whereas ss 10, 11, 52, 53 and 54 of the LAA and are specific provisions specifically to impress that the notification in Form E thereunder must mandatorily be served or communicated to the interested persons who are likely to be affected by the land acquisition in question, in the manner prescribed thereunder. The words 'constitute sufficient notice of any matter required to be published in the *Gazette* by or under any federal law ...' cannot override the effect of those relevant specific sections in the LAA. It cannot be construed that by the publication in the *Gazette*, the state authority had 'communicated' the said notification or declaration to the appellant for the purpose of O 53 r 3(6) of the RHC 1980. Giving effect to the relevant specific sections in the LAA, as discussed above, the said notification or declaration was only 'first communicated' to the appellant when Form E was served on it on 11 July 2011.

[56] It is a well-known rule of construction that specific provisions overrides general provisions (see *Lee Lian & Ors v Public Prosecutor* [1956] 1 MLJ 191; and *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271).

[57] The relevant specific provisions in the LAA must be given effect in interpreting the issue of service or communication of the notification or declaration to the interested persons in matters relating to land acquisition in the LAA. On this issue, we are in agreement with the observation made by Eusoffe Abdoolcader SCJ in delivering judgment of the Supreme Court in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 when His Lordship said:

> ... The court is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the court must endeavor to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded ...

[58] Learned senior federal counsel, for the Attorney General's Chambers cited the decision of the Federal Court in *Abdul Aziz Mohd Alias v Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 4 MLJ 1; [2010] 3 CLJ 643 to

support her argument that s 8 of the LAA is the operative provision with regard to the notification of the decision of the state authority to acquire land for a public purpose and the publication in the *Gazette* is a public notice to all persons including the appellant who was the registered proprietor of the lands in question. Her conclusion is that the 40 days time frame for the purpose of a judicial review application under O 53 r 3(6) of the RHC 1980 should run from the date of the *Gazette* notification of Form D on 9 June 2011.

[59] Our view is that the issue in that case can be distinguished from the issue before us in the present appeal and therefore the ruling may not be applicable in the present case. In that case, the Federal Court ruled that 'the 1993 Regulations (the Public Officers (Conduct and Discipline) Regulations 1993) is a federal law and duly *Gazetted* under PU (A) 395. As it is a law duly *Gazetted*, the public are deemed to have notice of the same'. In other words, the ruling deals with constructive notice based on s 18(2) of the Interpretation Act 1948 and 1967. It deals with the existence of a federal law where the public is deemed to have notice of the law upon their publication in the *Gazette*.

[60] In the present case before us we are interpreting O 53 r 3(6) of the RHC 1980, where the key words under consideration are 'when the decision is first communicated to the applicant'. The wordings of the Order must be read together with the specific mandatory provisions in the LAA, particularly ss 10, 11, 52 and 53, relating to service of notification or declaration on acquisition of land by the state authority in form E on the registered proprietor, the occupier of such land, or any other interested persons. The clear effect of those provisions is that the relevant notice or declaration relating to the acquisition must be brought to the actual knowledge (as opposed to constructive notice by way of a publication in the *Gazette*) of the persons concerned; only then, the interested persons can exercise their right to challenge the acquisition decision by way of judicial review proceedings under O 53 r 3(6) of the RHC 1980 within the prescribed time period.

[61] By the acquisition of the lands, the appellant was deprived of its rights to the property. As such it would only be just and fair that the decision to acquire the lands be brought to the appellant's actual knowledge by way of communicating the same to the appellant. The rights of a citizen to property under art 13 of the Federal Constitution could only be deprived in accordance with law and that an actual notice (as opposed to a constructive notice by way of a *Gazette*) of such deprivation ought to have been given to the owner as prescribed in the LAA. The appellant cannot be expected to apply for leave to commence judicial review to challenge the deprivation of its rights to the property unless it has knowledge or is made aware of such deprivation and this could only happen when the appellant is served with the actual or express notice that its right has been infringed. The first written notice required to be

issued and served on the appellant, as registered proprietor of the said lands, under the LAA is Form E issued pursuant to s 10(1) of the LAA.

[62] There are a number of authorities locally to support the above findings ie in applying O 53 r 3(6) of the RHC 1980, the time would only start to run against an applicant for judicial review when the applicant had actual knowledge of the relevant decision or that the applicant had been served with the relevant notices in accordance with relevant provisions of the LAA.

[63] In *Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2011] 7 CLJ 1005, the Kuala Lumpur High Court dismissed the applicant's application for leave for judicial review on the ground that there was inordinate delay in making the application under O 53 r 3(6) of the RHC 1980 and no good reason to grant an extension of time. The learned High Court judge found that the application was made more than 11 years from the time the first decision was made known to the public, and more than one year from the time it was communicated to the applicant. The learned High Court judge found that the applicant had actual knowledge of the approval of the EIA Report as of 8 January 2007, a period in excess of one year prior to the filing of the application for leave under O 53 r 3(6) of the RHC 1980.

[64] The learned High Court judge in that case, made her finding on the 40 days period stipulated under O 53 r 3(6) of the RHC 1980 based on the actual knowledge of the decision being communicated to the applicant.

[65] On appeal, the Court of Appeal and the Federal Court agreed with the finding and reasoning of the learned High Court judge on this issue and found no reason to interfere with the judge's exercise of discretion.

[66] In *Shaharuddin bin Ali & Anor v Superintendent of Lands and Surveys, Kuching Division & Anor* [2005] 2 MLJ 555, the High Court in Kuching, inter alia, came to the same finding that the 40 days period under O 53 r 3(6) of the RHC 1980 starts to run when the applicants first came to know about the Minister's direction dated 14 November 2001 extinguishing the alleged native customary rights of the applicants, when the applicants submitted their claims for compensation on 4 Mac 2002, even though the said Minister's direction was published in the Government *Gazette* on 14 November 2001.

[67] In *Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704; [2008] 6 CLJ 205, the Court of Appeal held that for the purpose of O 53 r 3(6) of the RHC 1980, time started to run against the appellants (in that case) when they first knew of the decision on 8 November 2003 when their representative met with the planning officer of the first respondent. It seems to suggest that the meeting with the representative of

the first respondent evidenced that they had actual knowledge of the said decision. However, the Court of Appeal held that 'taking 8 November 2003 as the latest date the decision was communicated, calculated to 14 February 2005 ie the date of filing this application for the judicial review there clearly had been inordinate delay in breach of O 53 r 3(6) of the RHC'.

CONCLUSION

[68] In conclusion, we are of the view that an application for leave for judicial review made under O 53 r 3(6) of the RHC 1980 challenging the decision of the state authority declaring that the land is to be acquired under the LAA, must be filed within 40 days from the date when the decision was first communicated to the applicant ie on the date when the notice of enquiry in Form E which appended a copy of the schedule to the declaration in Form D (as required under s 10(3) of the LAA) was issued pursuant to s 10 and served on the registered proprietor or occupier of the land pursuant to ss 11, 52, 53 and 54 of the LAA.

[69] In the present appeal, Form E dated 3 July 2011 was served through registered mail to the appellant on 11 July 2011. The appellant filed the leave application on 11 August 2011 ie 32 days from the date when it was first served on the appellant. This is clearly within the stipulated period of 40 days under O 53 r 3(6) of the RHC 1980. Therefore, the filing of the leave application was within time. That being the case the question of extension of time to file the leave application does not arise.

[70] Accordingly, we allow this appeal with costs and set aside the order of the High Court as well as the order of the Court of Appeal. We also make an order that the leave application for judicial review filed by the appellant be remitted to the High Court for hearing on merit.

Zaleha Zahari FCJ:

[71] In this judgment, unless expressly stated, reference to legal provisions refers to the Land Acquisition Act 1960 whilst reference to rules refers to the Rules of the High Court 1980, the rules in force at the material time.

[72] The appellant obtained leave to appeal to the Federal Court on 27 November 2012 against the decision of the Court of Appeal dated 30 May 2012 on the following questions of law:

(i) where a registered proprietor of a piece of land, who is not the occupier thereof, is challenging the state authority's decision made pursuant to s 8(1) of the Land Acquisition Act 1960('Act 486') ('LAA') declaring that the land is to be acquired, WHETHER the application for leave for

judicial review made under O 53 of the Rules of High Court 1980(RHC) must be filed within 40 days from:

(a) the date of the publication of Form D of the LAA in the Gazette; OR

(b) the service of the notice of enquiry in Form E of the LAA on the registered proprietor of the land pursuant to s 10(1) LAA; and

(ii) Where r 3(6) of O 53 of the RHCrequires an application for judicial review to be filed within 40 days from the date *'when the decision was first communicated to an applicant'*, WHETHER the state authority's decision, made pursuant to s 8(1) of the Land Acquisition Act 1960('Act 486')('LAA') declaring that the land is to be acquired, is *'first communicated'* to the registered proprietor:

(a) on the date of the publication of Form D of the LAA in the Gazette; OR

(b) the date when Form D of the LAA is served on the registered proprietor of the land by way of an appendix to Form E of the LAA pursuant to s 10(3) of the LAA; or

(c) the date when the notice of enquiry in Form E of the LAA is served on the registered proprietor of the land pursuant to s 10(1) of the LAA.

BACKGROUND

[73] The appellant is the owner of two pieces of adjoining lands, namely Lot 150 GRN 3605 and Lot 151 Seksyen 18 GRN 3606, Bandar Alor Setar, Daerah Kota Setar, Kedah (subsequently referred to as Lot 150, Lot 151 respective or jointly as 'the said lands'). On 12 December 1993 the appellant obtained approval from the relevant authorities to construct a building to be known as 'Plaza Tunku Yaacob Complex' on Lot 150. According to the appellant this building had only been partially constructed due to ongoing litigation which had yet to be resolved.

[74] The Perbadanan Kemajuan Negeri Kedah (the third respondent in the High Court as well as in this appeal, subsequently referred to as 'PKNK') vide letter dated 5 January 2011 informed the appellant that the Kedah State Government (the second respondent in the High Court and in this appeal subsequently referred to as the 'state authority') together with other named parties, were planning to re-develop the long abandoned Plaza Tunku Yaacob Complex. PKNK together with the Bellview Group were given the responsibility to jointly plan the proposed re-development of Plaza Tunku Yaacob Complex, Lot 151 as well as an adjacent petrol station. The appellant was invited to participate in the proposed re-development of the subject lands and to attend a meeting to be held at the PKNK's office on 18 January 2011.

[75] Representatives of the appellant duly attended the meeting held on 18 January 2011. At that meeting two options were considered for the re-development of the said lands, ie by way of land acquisition proceedings; alternatively, by way of a joint venture where the appellant would be invited to participate up to 20% to 30% equity. According to the appellant at this meeting no document were presented nor planning details given as to costing, sale forecast, time tables etc. to enable the appellant to make a considered decision whether or not to participate in the proposed joint venture.

[76] The appellant then, vide letter dated 30 January 2011 to PKNK, submitted a third proposal, ie that the appellant be allowed to complete the development of the Plaza Tunku Yaacob Complex. According to the appellant, there was no reply to this letter.

[77] On 20 April 2011, the pentadbir tanah Kedah (the first respondent in the High Court as well as in this appeal, subsequently referred to as 'the land administrator), pursuant to the power conferred by s 8, issued Form D, a declaration of intended acquisition of Lot 150 and Lot 151. The record shows that this Form D was published in the *Gazette* on 9 June 2011.

[78] The appellant contended that they had no knowledge of the declaration of intended acquisition in terms of the Form D which had been issued and *Gazetted*. The appellant's case was that during this period they were waiting for a response from PKNK to the proposal made vide their letter dated 30 January 2011, for them be allowed to continue to develop Lot 150.

[79] On 11 July 2011 the appellant received by registered mail a Form E dated 3 July 2011, notifying them that, pursuant to the Form D Declaration of Intended Acquisition of Lots 150 and 151 which had earlier been issued and *Gazetted*, an enquiry would be held on 25 July 2011 to hear all claims to compensation arising from the said acquisition. This hearing was however adjourned to 17 August 2011 for hearing.

[80] The appellant then, on 11 August 2011, filed an ex parte application for leave to apply for judicial review for the following orders:

(a) leave to apply for an order of certiorari to quash the decision of the state authority and the declaration of the intended acquisition of, inter alia, Lots 150 and 151;

(b) that subsequent proceedings of the said acquisition be stayed;

(c) in the event of the application being filed out of the 40 days prescribed under O 53 r 3(6), for an extension of time to file the application.

[81] In their affidavit filed in support of the application for leave, the appellant contended that the state authority had failed to take into consideration the following:

(a) the fact that the appellant had obtained approval to develop Lot 150 but was unable to complete the same due to ongoing litigation vide Alor Setar Civil Suit No MT1-23–06 of 1994;

(b) that the appellant was willing and ready to commence development of Lots 150 and Lot 151;

(c) the appellant's proposal to develop Lot 150 and Lot 151 on its own was not given due consideration;

(d) the state authority and PKNK had not complied with the Act, had acted mala fide and in bad faith to further the interest of third parties in making the decision to acquire the subject lands.

[82] The appellant then applied for the hearing before the land administrator to be adjourned pending disposal of the leave application to apply for judicial review, which application was not allowed by the land administrator. The appellant contended that they attended the inquiry held on 17 August 2011 before the land administrator without prejudice to their application which they had filed, for leave to file the application for judicial review.

[83] At the hearing of the appellant's Ex parte application for leave, the senior federal counsel ('SFC') who appeared for the Attorney General raised a preliminary objection. The SFC contended that the appellant's application was not filed within the time prescribed by O 53 r 3(6). Counsel for the land administrator and state authority also contended that the 40 days prescribed in O 53 r 3(6) had not been complied with. According to the respondents, time was to be computed from the date of the publication of the Declaration of Intended Acquisition of Form D in the *Gazette* (ie 9 June 2011).

[84] The appellant took issue. The appellant's case was the period of 40 days runs from the date Borang E was received by them by registered post (ie on 11 July 2011), not the date when Form D was published in the *Gazette* (9 June 2011). The appellant's case was 9 June 2011 was the date when the decision to acquire Lot 150 and Lot 151 was first communicated to the appellant. Thus, when the leave application was filed by the appellant on 11 August 2011, only 32 days had passed, well within the 40 days prescribed by the O 53 r 3(6).

[85] On 27 December 2011 the learned High Court judge of Alor Setar upheld the preliminary objection raised by the respondents. The appellant's

application for leave to apply for judicial review was then dismissed. The learned High Court judge ruled that time starts to run from the date of publication of Form D (the Notice of Intended Acquisition) in the *Gazette* ie on 9 June 2011. That the date of publication was the date on which the decision to acquire the said lands was first communicated to the appellant.The learned judge finding was that as the application was filed on 11 August 2011, the appellant was accordingly 23 days out of time. The learned High Court judge declined to exercise his discretion to extend the prescribed period as the appellant had not given any reason for delay in filing the said leave application.

[86] On appeal, the Court of Appeal on 30 May 2012 dismissed the appellant's appeal and affirmed the decision of the High Court judge. The unanimous decision of the Court of Appeal was that the learned High Court judge had properly directed his mind to the issue whether the application was filed within time. The Court of Appeal's reading of O 53 r 3(6) was there was nothing to suggest that the first communication must be 'received' by the appellant. A communication of the decision to the appellant can also occur when the decision was published in the *Gazette*. The Court of Appeal held that the Form D notification vide publication in the *Gazette*, which decision was required by law to be published in the *Gazette*, constituted sufficient notice to the appellant of the decision to acquire Lots 150 and 151. The date of such a publication can be regarded as the date when the decision to acquire the said lands was 'first communicated' to the appellant. On the High Court not exercising his discretion to extend time, the Court of Appeal held that the learned judge had in fact considered the appellant's application to extend time but declined to do so as the appellant had not given any reasonfor the latefiling of the said application.

THE APPELLANT'S SUBMISSIONS

[87] The appellant's counsel submitted that the Rules Committee would have used the word 'notice' instead of 'first communicated' in O 53 r 3(6) if it was intended that a notice to the public at large is sufficient compared to personal knowledge.

[88] The appellant's counsel submitted there was no necessity to resort to s 18 of the Interpretation Acts 1948 and 1967 in construing O 53 r 3(6). The meaning of the words of the O 53 r 3(6) was clear, time only start to run under the second limb of this rule, when the appellant had actual knowledge of the respondent's decision to acquire the said lands. The appellant had knowledge of the decision to acquire the said lands only when the appellant received Form E (enclosing the Form D) on 11 July 2011. The date when the decision was communicated to the appellant was therefore 11 July 2011. The prescribed 40 days' time thus commenced from 11 July 2011. As the leave application was

filed on 11 August 2011, it was accordingly filed well within the prescribed time frame.

[89] As to the appellant participation in the inquiry before the land administrator, the appellant's counsel submitted this should not be held against the appellant as the appellant had made it clear that it was without prejudice to the application for leave which had been earlier filed. The appellant had vide letter dated 15 August 2011 applied for an adjournment of the hearing of the inquiry scheduled on 17 August 2011 pending the outcome of the leave application, which application was not entertained. In such a situation the appellant had no choice but to participate in the inquiry before the land administrator. The appellant also highlighted the fact that they had also appealed vide the prescribed Form N, both dated 27 September 2011against the decision of the land administrator. One of the objections raised in the appeal was the fact that an application for leave for certiorari to quash the acquisition of the said lands had been filed. The fact of the appellant having filed the required Form N does not estop the appellant from proceeding with their leave application.

[90] According to the appellant, even if the land acquisition had been completed, this must not be construed as recognition to the legitimacy of the said acquisition.

[91] This court should accordingly compute time to apply for a leave for judicial review to commence from the date the appellant received Form E, or the Form E which appended with a copy of Form D, and to rule that the application for leave to file an application for judicial review was filed within time. The court was then urged to remit the appellant's application for leave back to the High Court for hearing.

THE FIRST AND SECOND RESPONDENTS' SUBMISSIONS

[92] Counsel for the first and second respondent submitted that s 8 is the operative provision with regard to the notification of the state authority's decision of an intention to acquire lands for a public purpose. The publication in the *Gazette* is a public notice to all persons, including the appellant, who is the registered proprietor of the lands in issue. Reliance was placed on s 18(2) of the Interpretation Acts 1948 and 1967('the Interpretation Act') in support of this proposition which provision states as follows:

> 18(2) Publication in the official Gazette of Malaysia shall constitute sufficient notice of any matter required to be published in the Gazette by or under any federal law or required to be published in the Sabah Government Gazette or the Sarawak Government Gazette by or under any enactment of those States which has been declared to be a federal law.

[93] In *Public Prosecutor v Koo Cheh Yew & Anor* [1980] 2 MLJ 235 ; [1980] 1 LNS 61, the Federal Court in discussing the application of s 18(2) of the Interpretation Acts, inter alia, at pp 239–240 stated as follows:

> The proper interpretation of statute by the courts requires the application of enacted law. In the ordinary law, this publication (which is common ground) not merely affords the public in general and the appellant in particular 'a practical and sensible way' in which they could ascertain but also constitutes sufficient notice of s 18(2) Interpretation Act, 1967(Rep 1973). I do not accept with respect to the suggestion that. Whereas ordinarily the law presumes that the notice of the public has been sufficiently drawn to the ban by publication in the Gazette,
>
> ... In other words, if the law fixes the public with knowledge and deems the knowledge to be a fact and if as we have postulated, common sense and ordinary prudence and public policy require that every individual should act at all times within the time prescribed by law, ...

[94] Reference was also made to several authorities by this apex court, ie *Mersing Omnibus Co Sdn Bhd v Minister of Labour & Manpower & Anor* [1983] 2 MLJ 54; *Ravindran P Muthukrishnan v Malaysia Examinations Council* [1984] 1 CLJ 320 and *Wong Kin Hoong & Anor v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161 which had consistently held that if an application is not filed within the prescribed time frame the court had no jurisdiction to grant leave.

[95] In *Mersing Omnibus* and *Ravindran*, the apex court held that leave should not be granted unless the application for leave is made within six weeks (the prescribed time period then). However an extension of time can be granted provided the delay is accounted for to the satisfaction of the court, as governed by O 53 r 1A of the RHC 1980 (both cases were decided before the amendment to O 53 of the RHC 1980 in the year 2000).

[96] In *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2010] 5 CLJ 865, the Federal Court emphasised the importance of observing the time period in filing an application for judicial review as follows:

> However, O 53 RHC sets out a specific procedure for an aggrieved party seeking relief incorporating a declaration (as provided by s 41 of the Specific Relief Act) against a public authority for infringement of his rights to which he is entitled to be protected under public law, to follow. It is our view that when such an explicit procedure is created ... to cater for this purpose, then as a general rule all such application for such relief must commence according to what is set down in O 53RHC , otherwise it is liable to be struck off for abuse of the process of the court.

[97] In this case the Declaration of Intended Acquisition in Form D was *Gazetted* on 9 June 2011. The application for leave to apply judicial review was

filed on 11 August 2011. Computing time from the date of the *Gazette* notification of Form D, there was accordingly a delay of 23 days in filing the said application.

[98] The learned High Court judge was right in holding that the forty days time period prescribed in O 53 r 3(6) was jurisdictional. The Court of Appeal was right in affirming the decision of the High Court and not interfering with the High Court judge's decision to extend time as no reason was given for delay warranting the court to exercise its discretionary power to extend time.

[99] Counsel for first and second respondents submitted that the answer to the questions posed must be answered as follows: that an application for leave for judicial review under O 53 must be filed within forty days from the date of the publication of Form D in the *Gazette*, not from the service of the notice of enquiry in Form E on the registered proprietor of the land.

THE THIRD RESPONDENT'S SUBMISSION

[100] Counsel for PKNK submitted, by reason the appellant having filed an appeal against the award made by the land administrator vide Form N pursuant to s 38(1) on 27 September 2011 arising from the said acquisition, which appeal is now pending hearing in Alor Setar High Court, the land acquisition is now completed. The sum awarded has been duly paid into court by the land administrator. The appellant had also vacated the subject land, and development is now at an advanced stage.

[101] Counsel for PKNK submitted that the questions posed for determination before this court were academic. The orders sought by the appellant would be an exercise of futility. The Federal Court decision in *Bato Bagi & Ors v Kerajaan Negeri Sarawak and another appeal* [2011] 6 MLJ 297 was cited as authority for this proposition.

DECISION

[102] Order 53 r 1 imposes an obligation on the decision maker to make a decision and to communicate the decision made. Order 53 r 3(6) then provides as follows:

> An application for judicial review shall be made promptly and in any event within 40 days from the date when the grounds for the application first arose or when the decision is first communicated to the applicant provided that the Court may, upon application and if it considers that there is good reason for doing so, extend the period of 40 days.

[103] That date, when ascertained, and upon expiration of the prescribed time frame, such a decision then becomes 'final' and immune to challenge. An aggrieved person is required to act 'promptly', and in any event, not later than forty days from 'the date when the grounds for the application first arose' or 'when the decision is first communicated to the respondent'. The intention of the rules clearly is that it is in the public interest that an aggrieved person's right of access to the court has to yield to the need for a swift finality of the decision.

[104] Compliance with the time frame prescribed by O 53 is fundamental as it goes to jurisdiction. In *Mersing Omnibus Co Sdn Bhd v Minister of Labour And Manpower & Anor* [1983] 2 MLJ 54), where the appellant was out of time and had not sought an extension of time nor accounted for the delay, the Federal Court held that leave should not have been granted.

> At the outset of the hearing of this appeal we raised the question of the appellant being out of time in his application for leave for certiorari in the light of the provisions of O 53 r 1A of the Rules High Court, 1980 ,the relevant part of which specifically provides that leave shall not be granted to apply for an order of certiorari unless the application for leave is made within six weeks after the date of the proceeding or the delay is accounted for to the satisfaction of the court or judge to whom the application for leave is made. As the decision of the Minister sought to be impugned is dated November 23, 1981, the period of six weeks would, on a computation under O 3 r 2(2) of the Rules of the High Courtexpire on January 5, 1982, and as the application for leave was made on January 9, 1982 the appellant was clearly out of time and no extension of time was sought nor the delay accounted for to the satisfaction of the learned Judge who heard the application as required by the rule. Apparently this point completely escaped all parties involved, as a result perhaps of an affliction of incorrigible somnolence that seems to pervade the perception of the law and practice of the profession from time to time. We took the point ourselves as it clearly goes to the jurisdiction of the court from which leave to apply for certiorari was sought as O 53 r 1(1) stipulates that no application for an order of certiorari shall be made unless leave therefor has been granted and rule 1A which we have already adverted to enacts that leave shall not be granted except in accordance with its specific provisions.

[105] In *Ravindran v Malaysia Examinations Council* [1984] 1 MLJ 168; [1984] 1 CLJ 320 the Federal Court held as follows:

> ... Order 53 r 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of certiorari shall not be granted unless made within six weeks after the date of the proceeding objected to except where the delay is accounted for to the satisfaction of the Court or Judge to whom the application is made ...
>
> In our view the whole issue is clearly one of jurisdiction. In the event only the first consideration of the Judge is relevant. Since the Judge rejected the explanation for the delay it follows that the Court had no jurisdiction to hear the application for leave for an order of certiorari. Whether the application for an order of certiorari had merits or not was irrelevant. This principle is implicit in *Mersing Omnibus Sdn Bhd v Minister of Labour and Manpower* [1983] CLJ (Rep) 266. There has been no

jurisdict ion to hear the application for certiorari because Order 53 r 1A of the Rules of the High Court 1980 expressly directs that leave shall not be granted Unless the application is made within six weeks after the date of the proceeding.

[106] The Federal Court recently in *Wong Kin Hoong & Anor v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161, at p 171 held:

> (30) In conclusion, we are of the view that the time frame in applying for judicial review prescribed by the Rules is fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.

[107] The critical issue in the questions posed for determination is, when does the '40 days' provided under O 53 r 3(6) start to run:

(a) whether from the date of the publication of Form D in the *Gazette* (ie 9 June 2011) as contended by the respondents; or

(b) from the date of service of Form E on the appellant (ie 3 July 2011) as contended by the appellant.

[108] The application for leave to apply for judicial review in this case was filed by the appellant on 6 January 2008. The appellant had, in abundance of caution, applied for an extension of time in the event that it was filed out of time.

[109] After careful consideration of the submission of parties. I am in agreement with the respondents' counsel submissions and not that of the appellant. I am of the view that the filing of an application for leave to apply for judicial review for an order of certiorari must be filed within forty days of publication of Form D in the *Gazette* and not from the date of service of Form E.

[110] Section 8 is clearly the operative provision with regard to the notification of the state authority's decision to acquire land for a public purpose. If the law fixes the public with knowledge, and deems such knowledge to be a fact, a court must necessarily give effect to it. Clearly in respect of lands to be acquired for a public purpose the notification of such an intention of the state authority by way of a publication in the *Gazette* is the most practical and sensible way in which to give notice of such an intention. The publication of Form D in the *Gazette* is a public notice to all persons, such as the appellant, the registered proprietor, of lands which was subjected to the acquisition.

The Declaration of the Intended Acquisition in Form D in this case was

Gazetted on 9 June 2011. The application for judicial review was filed on 11 August 2011. The Court of Appeal was, in my view, correct in ruling that the 40 days time period prescribed in O 53 r 3(6) commenced from 9 June 2011 and that there was delay in filing the application for leave.

[111] For the above reasons the answer to the questions posed in (i)(a) and (ii)(b) is accordingly answered in the affirmative. An application for leave to apply for judicial review under O 53 must be filed within 40 days from the date of the publication of Form D in the *Gazette* and not from the service of the notice of enquiry in Form E on the registered proprietor.

[112] Be that as it may I am of the view that the facts and circumstances in this case warrant an exercise of the court's discretion to extend time in the appellant's favour. The state authority's omission to reply to the appellant's letter 30 January 2011 containing the proposal that the appellant be allowed to continue with the development of the Plaza Tunku Yaacob Complex should have been taken into consideration. This failure of the state authority to respond warrants the exercise of the court's power to extend time. In my view the fact that the appellant had attended the inquiry before the land administrator should not be held against them. In this case the appellant had in fact applied for an extension of time. There was sufficient material before the court to extend time. The application for extension should have been allowed.

[113] For this reason this appeal is allowed with costs. The case is remitted back to the High Court for a determination on the merits of the leave application.

Appeal allowed.

Reported by Afiq Mohamad Noor